



RESPONSE TO COMMENTS

HOLLY STREET LANDFILL Bellingham, Washington

***REMEDIAL INVESTIGATION/FEASIBILITY STUDY,
CONSENT DECREE,
CLEANUP ACTION PLAN
SCHEDULE
RESTRICTIVE COVENANT
COMPLIANCE MONITORING PLAN
AND
SEPA & DNS DOCUMENTS***

ISSUED BY:

**WASHINGTON STATE DEPARTMENT OF
ECOLOGY**

TOXICS CLEANUP PROGRAM

March 2003

Introduction

On August 20, 2002, a draft Remedial Investigation/Feasibility Study (RI/FS), Consent Decree, Cleanup Action Plan and related documents for the Holly Street Landfill site in Bellingham were made available to the public for review and comment. The 40-day comment period ended on September 20, 2002.

Public involvement activities related to this public comment period included:

- Distribution of a fact sheet describing the site and the documents through a mailing to approximately 700 people, including neighboring businesses and other interested parties;
- Publication of a paid display ad in *The Bellingham Herald* on August 11, 2002;
- Publication of notice in the Washington State Site Register, dated August 6, 2002 and August 20, 2002;
- Posting of the documents (excluding the RI/FS) on the Ecology web site; and
- Providing copies of the documents through information repositories at Ecology's Bellingham Field Office and Northwest Regional Office, and the Bellingham Public Library – Downtown Branch.

No comments were received regarding the RI/FS. A number of comments were received regarding the Consent Decree, Cleanup Action Plan and the Restrictive Covenants (or general comments based on a reading of all of these documents together). Based upon the public comment, several minor revisions were made to the documents. Ecology made a determination of non significance (DNS) for the cleanup action implementation at this site. No significant changes were made to the Consent Decree, Cleanup Action Plan, SEPA and the Compliance Monitoring Plan and they are now considered to be final. Cleanup is targeted to begin during the fall of 2004.

All comments received during the public comment period are summarized below along with Ecology's responses to each comment. Copies of the comment letters are attached.

Background

The Holly Street Landfill site (the “site”) is a 13-acre historic solid waste landfill located in the Old Town district of Bellingham. In the late 1800s, the site was part of the original Whatcom Creek estuary and mudflat. Around 1905, private property owners began filling portions of the site with dredge spoils and other materials to increase useable upland areas. From 1937 to 1953, municipal waste was used by owners to fill private tidelands within the former Whatcom Creek estuary. Wastes disposed at the site included debris and scrap materials, consistent with landfill disposal practices of the time.

The solid waste is located on both sides of Whatcom Creek. Approximately 9.1 acres of refuse lie on the northwest side of Whatcom Creek (including the former Sash & Door property, recently purchased by the City of Bellingham) and 3.8 acres lie on the southeast side (Maritime Heritage Park). The City currently owns 8.3 acres of the 13-acre site, including all landfill properties located along the Whatcom Creek shoreline. Various private property owners own land around the perimeter of the site.

A draft Remedial Investigation/Feasibility Study (RI/FS) has been prepared for this site, including collection of data needed to evaluate the nature and extent of contamination. Soil, sediment, surface water and groundwater conditions were characterized during the Remedial Investigation (RI). Based on the findings of the RI, no current public health hazard exists as a result of exposure to contaminants. However, controls are needed at the site to continue to prevent human and environmental exposure to buried (subsurface) refuse and associated soil contaminants. Moreover, although contaminants have not been detected in groundwater at the site at levels of potential concern, metals such as copper and zinc present in landfill refuse are mobilized by tidal processes affecting the shoreline landfill zone. These processes result in seepage to Whatcom Creek along a localized reach of the former Sash & Door property shoreline that poses a potential risk to sensitive aquatic species in this area. The Feasibility Study (FS) developed and evaluated three potential remedial alternatives for the site.

The preferred remedial alternative has been identified in the Cleanup Action Plan and includes construction of a cap along the former Sash & Door shoreline and localized upland areas, methane control in a limited area of the site, institutional controls, and monitoring of localized surface water seeps. If funding is available, habitat restoration and public access may be integrated into the cleanup action. The habitat restoration component would include conversion of approximately 0.3 acres of existing uplands to aquatic habitat. Future site plans are consistent

with maintaining long-term habitat restoration benefits. While the habitat restoration component is consistent with remedial action objectives, it is not necessary to achieve cleanup goals.

Comments Received and Ecology Response

Please note: Exhibit G to the Consent Decree, Future Site Use Conceptual Model Plan, Figure A3.1 is modified to reflect Ecology's Approved Figure A3.1 of August 7, 2002 that includes a 4" Vent Stack

Robert Tull (for Northwest Recycling, Inc. and the Parberry family)

#1 Comment Summary: Independent research suggests Holly St. Landfill was a City solid waste landfill. Cleanup documents should be more explicit.

Response: *The cleanup documents, including the Cleanup Action Plan, accurately characterize the information available to Ecology and the City regarding historic use of the landfill. The purpose of these documents is not to resolve any disputed issues of fact as they may relate to liability, but rather to provide sufficient information to support the cleanup decision and to establish the Court's jurisdiction over the settling parties. As drafted, the documents accomplish both ends and no revisions are necessary. No changes.*

#2 Comment Summary: The Consent Decree and Restrictive Covenant should give consideration to different treatment for different parcels within the site.

Response: *The Cleanup Action Plan (Exhibit A), the Site Diagram (Exhibit B) and the Restrictive Covenant (Exhibit D) have been revised to include a map showing the extent of municipal landfill waste, extent of the methane plume and property ownership. This visually conveys that different parcels have different contaminant concerns. Individual Restrictive Covenants will be substantively equivalent to the model covenant included in the Consent Decree, but will be tailored to the specific property (i.e., methane controls will only be required for the City-owned Maritime Heritage Park property). The Consent Decree also includes a minor revision to differentiate between those properties that require methane controls (City's Maritime Heritage Park property only) and other properties. The City under its obligation in the Consent Decree shall include those properties located within the Maritime Heritage Park area in their methane sampling as*

part of the compliance monitoring for the site.

#3 Comment Summary: Request for verification that no action is required by Northwest Recycling and Parberry family unless they undertake facility change.

Response: *The division of responsibilities in the Consent Decree requires the City to perform all currently identified active cleanup, including upland and shoreline cap enhancement and methane control. The division of responsibility only requires non-City settling parties to record the Restrictive Covenant against their property. However, as noted in Paragraph VI.A of the Decree, liability at the site remains joint and several under MTCA except as provided in Sections XXVIII (Contribution Protection) and XXIX (Covenant Not to Sue). Accordingly, should the City fail to perform its responsibilities, Ecology could seek enforcement against other settling parties. No changes.*

#4 Comment Summary: Request for clarification regarding acknowledgement of joint and several liability in Consent Decree Paragraph VI.A.

Response: *MTCA liability is joint and several. Accordingly, potentially liable parties who do not settle are subject to joint and several liability for the entire cleanup and do not receive the protection from liability provided by the Consent Decree (release of claims by the State and protection from third party contribution actions). As discussed above, the Decree divides responsibility for cleanup actions between the City and other settling parties while remaining consistent with MTCA's joint and several liability scheme. For non-City settling parties, joint and several liability would only be invoked under the Decree if the City failed to perform its obligations. No changes.*

#5 Comment Summary: Section X of Decree (Access) does not differentiate between City and other settlers.

Response: *Ecology requires access to all properties within the site, not just the City's property, to ensure proper completion of the remedial action. No changes.*

#6 Comment Summary: Request for clarification that Consent Decree Paragraph VI.G does not require active remediation by Northwest Recycling or Parberry family unless they undertake facility change.

Response: *The comment is correct that the Cleanup Action Plan, which is based on available data, only calls for active remediation on city-owned property (shoreline and approximately 0.4 acre area in Maritime Heritage Center). See also Response to Comment No. 3. No changes.*

#7(a) Comment Summary: Consent Decree Section XIV (Transfer of Interest in Property) seems overly broad. Request for explanation of same.

Response: *Section XIV is derived from the model MTCA Consent Decree. The section is intended to ensure continued protection of public health and the environment regardless of subsequent transfer of interests in the real property that is the subject of the Decree. By ensuring that Ecology has notice of future transfers in interest, the agency can evaluate such transfers to ensure that the transfer will not result in land uses or activities that will interfere with the remedy and establish any necessary communications with the new interest holder. No changes.*

#7(b) Comment Summary: Request for clarification of parcels affected by Consent Decree Paragraph XV.B.

Response: *Paragraph XV.B applies to all parcels within the site (see Exhibit B to Consent Decree) not owned by the City or other settling defendants. No changes.*

#8 Comment Summary: Suggests that Consent Decree Section XX (Indemnification) should not apply to non-City settling parties.

Response: *While the Cleanup Action Plan only requires immediate active remediation on property owned by the City, other settling parties may subsequently undertake active remediation, i.e., in connection with facility changes. Accordingly, Section XX applies to all settling parties. No changes.*

#9 Comment Summary: Consent Decree Section XXIII (Implementation of Remedial Action) should apply to City only.

Response: *As discussed above, while the Decree contemplates division of responsibilities between the City and other settling parties, the Decree does not relieve other settling parties of their joint and several liability except as provided in Sections XXVIII (Contribution Protection) and XXIX (Covenant Not to Sue). Accordingly, this*

Section properly refers to all defendants. No changes.

#10(a) Comment Summary: Consent Decree Sections XXVII – XXIX (Claims Against the State, Contribution Protection, and Covenant Not to Sue) do not differentiate between City and other settling parties.

Response: *As discussed above, this Decree does not relieve any settling parties from joint and several liability. Accordingly, all of the noted sections, including those providing the settling defendants with protection from private cost-recovery claims (Section XXVIII) and claims by the State (Section XXIX) apply to all of the settling defendants. No changes.*

#10(b) Comment Summary: Request for clarification regarding Consent Decree’s protection from contribution actions between defendants.

Response: *Section XVIII (Contribution Protection) establishes a bar to claims for contribution against any settling party for the matters addressed by the Consent Decree (i.e., for the cleanup). This section protects settling parties against covered claims by other settling parties or by non-settling parties. No changes.*

#11 Comment Summary: Request for revision of the description of hazardous substances remaining on properties covered by the Restrictive Covenant so that it does not imply all substances are present on all properties. Specifically, requests deletion of the list of substances after the reference to WAC 173-340-740.

Response: *The Restrictive Covenant has been revised to address this comment. Individual Restrictive Covenants will be substantively equivalent to the model covenant included in the Consent Decree, but will be tailored to the specific property (i.e., methane controls will only be required for the City-owned Maritime Heritage Park property) . Also, as noted in response #2 above, the Cleanup Action Plan (Exhibit A), the Site Diagram (Exhibit B), and the Restrictive Covenant (Exhibit D) have been revised to include a map showing the extent of municipal landfill waste, extent of the methane plume and property ownership. This visually conveys that different parcels have different contaminant concerns.*

#12(a) Comment Summary: City’s Shoreline Management regulations, which are referenced in the Restrictive Covenant, may not apply to some of the properties

within the site.

Response: *The Restrictive Covenant does not assert that the City's Shoreline Management regulations apply to all properties, but rather references the regulations as an element of the City's land use controls which do apply to all property within the site. No changes.*

#12(b) Comment Summary: Requests more discussion of Restrictive Covenant's "ground floor residential" use restriction.

Response: *The ground floor residential and day care center use restriction is a common one in MTCA remedial actions and refers to the common sense usage of the terms "residential use" and "day care center use." The terms are well understood by Ecology, the City and others and do not require further elaboration. No changes.*

#13 Comment Summary: Request for different treatment for different parcels within the site. Specifically, request for clarification that methane control in the Restrictive Covenant only applies to city-owned property.

Response: *See response to comment #11 above. Also, the city under its obligation in the Consent Decree shall include those properties located within the Maritime Heritage Park area in their methane sampling as part of the compliance monitoring for the site.*

#14 Comment Summary: Request for information on Ecology's use of information from Restrictive Covenant's required notices of proposed conveyancing.

Response: *As noted in response #7 above, notices to Ecology of proposed conveyancing ensure continued protection of public health and the environment regardless of subsequent transfer of interests in the real property that is the subject of the Decree and Restrictive Covenants. Notices of proposed conveyancing are reviewed by the Ecology site manager for protection of the remedy and consistency with use restrictions. No changes.*

#15 Comment Summary: Requests clarification of Restrictive Covenant's requirement to notify current lessees of use restrictions under the Restrictive Covenant.

Response: *The Restrictive Covenant requires settling property owners to advise*

current tenants of the Covenant and its land use restrictions in order to ensure that current tenants' activities do not inadvertently create a risk to human health or the environment. No changes.

#16 Comment Summary: Restrictive Covenant's notice provisions are vague.

Response: *As detailed in Section X of the Consent Decree and in the Restrictive Covenant, Ecology and its authorized representatives will provide settling defendants with advanced notice of its entry onto property within the site where feasible. No changes.*

Robert Tull (for BS&D, LLC)

#17 Comment Summary: BS&D, LLC does not intend to participate in Consent Decree. References to BS&D should therefore be removed from Decree.

Response: *Ecology and the City had previously understood that BS&D, LLC wanted to receive the protection from potential liability provided by the Consent Decree (release of claims by the State and protection from third party contribution actions). However, based upon this comment, the Decree (Section V) has been revised to remove any references to BS&D, LLC. Note that removal from the Consent Decree does not eliminate the requirement to record a Restrictive Covenant against your property.*

John Sands (for Boss Tweed Custom Catering)

#18 Comment Summary: Requests clarification that all of Mr. Sands' property is within the site boundaries.

Response: *Mr. Sands' property is within an area that may have been affected by municipal landfill waste. Further, having the Consent Decree and its Restrictive Covenant requirement apply to this larger area would provide additional environmental protection to a greater area that is adjacent to the site. Accordingly, the Consent Decree has been modified to indicate that all of Mr. Sands' property is within the site*

boundaries.

#19 Comment Summary: Requests clarification of the properties subject to methane control requirements.

Response: *Please see response #2 and #13 above.*

Toni Nagel, Photo Archivist/Curator of History, Whatcom Museum of History and Art

#20 Comment Summary: Requests revision of the boundaries for the “Holly Street Landfill” as indicated in Figure 1 of the Cleanup Action Plan (Aug 2002) to exclude existing structures that were in place prior to filling of the area.

Response: *The site boundary was determined from data collected from test holes and pits in several studies summarized in the 2001 Holly Street Landfill Remedial Investigation/Feasibility Study (RI/FS). From 1937 to 1953 tidelands in the site were filled with solid waste. The waste material surrounded the buildings, as you noted in your letter. The waste material was generally excluded from the building footprint by construction of basements. In the case of the Territorial Courthouse, the first floor and partial basement were surrounded by fill, while the second floor was above the fill material. Because fill material is adjacent to the buildings and there are areas where newer buildings are located over fill, it is most appropriate for the boundary to remain as drawn. No changes.*

#21 Comment Summary: The SEPA Environmental Checklist, at item no. 13, Historic and Cultural Preservation, neglects mention of two listed historical sites on or adjacent to the Landfill.

Response: *The SEPA Checklist has been revised to include the Territorial Courthouse located at 1308 “E” Street and the Great Northern Passenger Station, which is approximately one block from the site boundary. In addition, the Oakland Block, at 310-318 W Holly, near the southeastern site boundary, has been added to the SEPA Checklist.*

#22 Comment Summary: In light of the potential eligibility for the National Register of Historic Places of existing structures, a historical archaeologist should be

employed to survey the area and monitor work performed, especially on the north side of the creek, as the cleanup extends beyond the “B” street right-of-way and adjacent areas.

Response: *The Cleanup Action Plan (Exhibit A), is revised in the Executive Summary to emphasize the historical significance of the area. However, the proposed Cleanup Action Plan for the Holly Street Landfill consists of in situ containment. The upland areas where historic structures exist or were formerly located will remain capped and undisturbed by the cleanup action. There will be no excavation beyond the “B” street right-of-way and adjacent areas where the shoreline cap and potential integrated habitat restoration will be installed. Therefore, archeological survey or monitoring related to the site, upland of the shoreline cap construction and potential habitat restoration area, will not be required. Also, see response #23 below.*

#23 Comment Summary: Inquires whether the cleanup requires compliance with Section 106 of the National Historic Preservation Act.

Response: *Compliance with Section 106 of the National Historic Preservation Act will be required as part of the Corps of Engineers’ Section 404 permitting process for the shoreline cap construction project and potential habitat restoration project. Through the Section 106 process, the Corps and the City will make appropriate inquiry into the potential for disturbance of cultural resources eligible for inclusion on the National Register of Historic Places. Based on the results of this inquiry, the Corps and the City, in consultation with the State Historic Preservation Officer and any affected tribes as appropriate, will develop any necessary plan for monitoring of cleanup activities and protection of potential cultural resources. Outside of the shoreline cap and potential habitat restoration areas, no upland excavation will be conducted as part of the cleanup. No changes.*

Please note: The City and Ecology have met with representatives from the Lummi Nation and have begun a dialogue about the Section 106 process. The Lummi Nation recently submitted a letter regarding this process. Because this letter was received after the end of the comment period, the letter and Ecology’s response will be posted separately on the Ecology website (address below) or a hard copy can be requested by contacting Jessica Paige, Public Involvement, (360) 738-6280.

http://www.ecy.wa.gov/programs/tcp/sites/sites_information.html

James Hale, local citizen and archeologist

#24 Comment Summary: Requests that appropriate process be followed in relation to heritage resources, including the following: conduct a professional cultural resource assessment of the entire project area to separate oral and anecdotal history from that which is found on the ground; document any site areas encountered; follow any cultural resource recommendations for appropriate cultural resource management.

Response: *Please see response #22 and #23 above.*

#25 Comment Summary: Expresses concern about potential historical artifacts in the bluff from the post office south to the Whatcom Museum of History and Art.

Response: *The Cleanup Action Plan does not include any work on or near the bluff, which is outside of the site boundary. No changes.*

Aubrey Stargell, Bellingham

#26 Comment Summary: Questions use of taxpayer time/money and urgency for “cleanup.”

Response: *Hazardous substances within the fill and municipal wastes at the site exceed cleanup levels set by the Model Toxics Control Act (MTCA). Specifically, shoreline seepage discharges from portions of the site into the Whatcom Creek estuary are above MTCA surface water cleanup levels for copper and zinc. Soil methane gas at the Maritime Heritage Park is above the federal lower explosive levels. Implementation of the Cleanup Action Plan under MTCA is necessary to protect human health and the environment. No changes.*

#27 Comment Summary: Favors other habitat improvements.

Response: *An alternative integrated cleanup/restoration action is proposed in the Cleanup Action Plan that is not required but which Ecology has determined is consistent*

with remedial action objectives. If funding is obtained, this alternative, which includes converting upland to aquatic habitat; salt marsh (emergent) and mudflat restoration; and riparian plantings in the Whatcom Creek estuary, will benefit juvenile salmonids during their transition from fresh to salt water. The Bellingham Bay Demonstration Pilot Work Group, comprised of local, state, federal and tribal representatives, identified restoration of nearshore habitat in the Whatcom Creek estuary among the highest priority actions for the region. In addition, the proposed project includes habitat restoration components identified by the Joint Natural Resources Cabinet and the WRIA 1 Strategy.